REMARKS

Claims 1-9 are pending in the instant application. The pending claims have been subjected to a Restriction Requirement under 35 U.S.C. §121.

Specifically, the Examiner suggests that present invention comprises two distinct groups:

Group I, claims 1-4 and 6-9, drawn to a nucleic acid, probe, and kit, classified in class 536, subclass 23.1.

Group II, claim 5, drawn to a method of determining prognosis using a nucleic acid, classified in class 435, subclass 6.

The Examiner suggests that groups I and II are related as a product and process of use. It is suggested that in the instant case, the product as claimed can be used in a materially different process such as isolating the full ORF comprising SEQ ID NO:2.

Applicants respectfully traverse this restriction requirement.

In accordance with MPEP § 803, there are two criteria which must be met for a proper restriction requirement. The first is that the inventions be independent or distinct; the second is

that there would be serious burden on the Examiner if the restriction is not required.

In contrast, the economic burden on Applicant by restricting this application into separate applications is quite serious and may prohibit Applicant from obtaining the full patent coverage to which they are entitled.

In the present invention, claims 1-4 and 6-9 (group I) relate to the nucleotide sequence from SEQ ID NO:2, and its uses in a probe for use in identifying a patient at risk for progression into the malignant phenotype, and a kit for use in detecting whether a patient is at risk for glioblastoma multiforme. Group II is drawn to a method of determining whether a patient is at risk for glioblastoma multiforme comprising adding a labeled probe comprising the nucleotide sequence of SEQ ID NO:2, which is covered by the claims of group I.

Accordingly, since this restriction requirement does not meet both criteria required under MPEP §803 to be proper, withdrawal of this restriction requirement is respectfully requested.

However, in an earnest effort to be fully responsive and facilitate prosecution of this application, Applicant elects to prosecute Group I, claims 1-4 and 6-9, drawn to a nucleic acid, probe and kit, with traverse.

Respectfully submitted,

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Date: **June 25, 2004**

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